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28 Attorneys for Mesirow Financial Interim Management, LLC,  
the Debtors' Chief Restructuring Officer and Crisis Managers

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

21 In re:  
22 USA COMMERCIAL MORTGAGE COMPANY,  
23 Debtor.

24 In re:  
25 USA CAPITAL REALTY ADVISORS, LLC,  
26 Debtor.

27 In re:  
28 USA CAPITAL DIVERSIFIED TRUST DEED  
FUND, LLC,  
Debtor.

Case No. BK-S-06-10725 LBR  
Case No. BK-S-06-10726 LBR  
Case No. BK-S-06-10727 LBR  
Case No. BK-S-06-10728 LBR  
Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under  
Case No. BK-S-06-10725 LBR

**DECLARATION OF ROBERT E. KOE IN  
SUPPORT OF APPLICATION FOR ENTRY**

1 In re:  
2 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

3 In re:  
4 USA SECURITIES, LLC,  
Debtor.

5 Affects:

- 6 ☒ All Debtors  
7 ☐ USA Commercial Mortgage Company  
8 ☐ USA Securities, LLC  
9 ☐ USA Capital Realty Advisors, LLC  
10 ☐ USA Capital Diversified Trust Deed Fund, LLC  
11 ☐ USA First Trust Deed Fund, LLC

**OF ORDER (I) FINALLY ALLOWING AND APPROVING ALL COMPENSATION AND EXPENSES INCURRED BY MESIROW FINANCIAL INTERIM MANAGEMENT, LLC IN ITS CAPACITY AS DEBTORS' CRISIS MANAGERS AND CHIEF RESTRUCTURING OFFICERS FOR THE PERIOD APRIL 13, 2006 THROUGH MARCH 12, 2007; (II) ALLOWING AND APPROVING A SUCCESS FEE; (III) AUTHORIZING APPLICATION OF THE RETAINER AGAINST THE ALLOWED FEES AND EXPENSES; AND (IV) AUTHORIZING PAYMENT OF THE BALANCE DUE**

12 I, Robert E. Koe, hereby declare, verify and state as follows:

13 1. I make this Declaration in support of the application (i) finally allowing and  
14 approving compensation in the amount of \$11,389,203.09 for 27,417.60 hours of services  
15 rendered and expenses incurred in the amount of \$1,117,168.74 by Mesirow Financial Interim  
16 Management ("MFIM"), in its capacity as the crisis managers and chief restructuring officers for  
17 USA Commercial Mortgage Company ("USACM"), USA Capital Realty Advisors, LLC ("USA  
18 Realty"), USA Capital Diversified Trust Deed Fund, LLC ("DTDF"), USA Capital First Trust  
19 Deed Fund, LLC ("FTDF") and USA Securities, LLC ("USA Securities", and collectively with  
20 USACM, USA Realty, DTDF and FTDF, the "**Debtors**"), debtors and debtors-in-possession in  
21 these chapter 11 cases (the "**Cases**"), for the time period beginning on April 13, 2006 and ending  
22 on March 12, 2007 (the "**Application Period**"); (ii) approving a success fee in the amount of  
23 \$2,500,000.00; (iii) authorizing application of the \$150,000 retainer against finally allowed fees  
24 and expenses; and (iv) authorizing payment of \$14,856,371.83 (after application of the Retainer  
25 and net of voluntary reductions totaling \$360,769.91) (the "**Final Application**").  
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1           2.       I am a Director at MFIM and have been employed by MFIM since October 23,  
2 2006. Attached as **Exhibit B** to the Final Application is information regarding my  
3 qualifications and industry experience.

4           3.       Unless otherwise defined, any capitalized terms not defined herein have the  
5 meaning set forth in the Final Application. Except as otherwise indicated, all facts set forth in  
6 this Declaration are based upon my personal knowledge, my review of relevant documents,  
7 my opinion based upon my experience and my knowledge of the Debtors' operations and  
8 financial condition.  
9

10          4.       I have worked on the Debtors' cases since October 24, 2006, and have  
11 supervised the management of the Debtors' loan portfolio as described below. If I were called  
12 upon to testify, I could and would testify competently to the facts set forth herein.

13       A.       ***Loan Portfolio***

14          5.       MFIM professionals worked diligently to collect on the outstanding loans in the  
15 portfolio. For many of the loans, this collection effort proved to be an arduous task. The  
16 difficulties frequently encountered can be explained by the nature of the loans and how they  
17 were managed prior to MFIM's retention. Most if not all of the loans were short-term facilities  
18 (up to 24 months) and were largely bridge loans or other construction type facilities, in which no  
19 payments were due prior to loan maturity (other than, from time to time, interest payments  
20 advanced by the Direct Lenders and paid periodically out of escrow). Therefore, the ability to  
21 deal proactively with problems in advance of loan maturity did not exist. Further, the loans were  
22 higher-risk facilities, reflected by interest rates which ranged between 12% and 18%, the various  
23 fees charged on each loan, and the minimal amount of underwriting conducted, as reflected in  
24 the lack of due diligence documents in each loan file.  
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1           6.       These problems were compounded by a lack of a loan servicing or workout group  
2 to collect non-performing loans before the arrival of MFIM. Instead, former management simply  
3 provided loan extensions to defer collections and/or, alternatively, would pay interest on non-  
4 performing loans from other sources. In addition, MFIM discovered that management frequently  
5 acquiesced to borrowers' delinquencies in exchange for equity in the project, or for an agreement  
6 to pay additional fees. Further, while USACM monitored its loans utilizing Excel spreadsheets  
7 which detailed payments made, the data was generated from USACM's iTrack System which, as  
8 has been noted in the Final Application, was inaccurate and incomplete. No log book was  
9 maintained with respect to calls, inquiries or collection efforts.

11           7.       MFIM reviewed and inventoried each loan file. Documentation reviewed, other  
12 than the actual loan agreements, included appraisals, maps, financial information, and  
13 projections. MFIM also initiated a process of obtaining new or updated appraisals on all of the  
14 collateral. MFIM refined and implemented procedures to ensure that accurate payment records  
15 were maintained and otherwise preserved appropriate accounting records on each loan and the  
16 sums collected thereon. In addition, MFIM performed certain calculations related to default  
17 letters, payoff demands, and other *ad hoc* loan related requests. Until the loans were satisfied,  
18 MFIM proceeded diligently to collect all payments due under the terms of the notes. MFIM  
19 identified loans with past due payments and/or documentation problems, which often included  
20 missing or unexecuted documents. MFIM created, supervised, and implemented a process of  
21 establishing a work-out strategy for each loan and MFIM personnel held numerous daily  
22 meetings and conference calls to work with borrowers to collect on the portfolio. MFIM  
23 reviewed and analyzed settlement proposals and other correspondence received from borrowers  
24 and other interested parties. These efforts resulted in substantial collections of principal and  
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1 interest for the Direct Lenders, including the Funds, as well as collections of fees owed to  
2 USACM.

3 8. As these Cases progressed, the loan portfolio grew continually more difficult to  
4 collect. MFIM collected many of the higher quality loans in the early stages of these Cases as  
5 they matured. Soon after the filing, nearly all of the loans in the portfolio were either past  
6 maturity or were not currently paying interest. The loans collected during the Application Period  
7 represented many loans that required significant effort as borrowers became more recalcitrant.  
8 The impending sales process also increased the difficulty in collections as many borrowers  
9 apparently hoped to extract discounts from the successful bidder. Due to the public nature of the  
10 auction process, the borrowers were well aware that the successful bidder would be purchasing  
11 the assets of FTDF at a discount. Furthermore, many borrowers were under the mistaken  
12 impression that USACM actually owned the loans and were selling the entire portfolio at a  
13 discount. As MFIM could not accept less than 100% payoffs without the approval of all of the  
14 Direct Lenders in the corresponding loan, the relevant Committees, and the Court, many  
15 borrowers apparently decided that it was beneficial to delay payments in the hope of extracting  
16 discounts from the new loan servicer, who would not be as hindered by the bankruptcy process.  
17 The unavailability of debtor-in-possession financing also made it impossible for USACM to  
18 foreclose on the delinquent loans due to the lack of cash necessary to fund any carrying costs  
19 related to the collateral supporting the loans (nearly all of which were cashflow negative).  
20 Because USACM could not foreclose, many borrowers determined that delaying payment until  
21 after the auction would not carry much downside risk.  
22

23 9. As of March 12, 2007, MFIM collected approximately \$280.7 million, consisting  
24 of \$227.2 million in principal, \$46.6 million in current interest, and \$6.9 million in fees. Every  
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loan payoff under MFIM's direction collected the principal and interest owed to the Direct  
Lenders in full. Loans fully paid off during the Application Period include:

<u>Loan Name</u>	<u>Transaction Date</u>	<u>Payoff Amount</u>
5252 Orange, LLC	6/9/2006	\$ 3,800,000.00
Ashby Financial \$7,200,000	9/1/2006	7,200,000.00
Boise/Gowen 93	9/7/2006	4,831,004.82
Cloudbreak LV	12/21/2006	3,800,000.00
Copper Sage Commerce Center, LLC	6/22/2006	176,947.19
Cottonwood Hills, LLC	10/11/2006	4,000,000.00
Del Valle Isleton	5/23/2006	6,520,000.00
Elizabeth May Real Estate	1/18/2007	10,050,000.00
Fiesta Development \$6.6	12/15/2006	6,600,000.00
Fiesta Development McNaughton	1/12/2007	6,000,000.00
Fiesta/Beaumont \$2.4m	7/21/2006	2,400,000.00
Franklin - Stratford Investments, LLC	2/13/2007	5,225,000.00
Gateway Stone	2/28/2007	13,185,000.00
Gilroy	6/30/2006	4,950,000.00
Glendale Tower Partners	8/21/2006	6,500,000.00
Golden State Investments II	6/5/2006	2,850,000.00
Goss Road	1/2/2007	1,000,000.00
Hasley Canyon	11/14/2006	11,700,000.00
HFA- North Yonkers	5/26/2006	24,000,000.00
HFA- Riviera 2 <sup>nd</sup>	5/26/2006	8,000,000.00
I-40 Gateway west	2/14/2007	4,530,000.00
I-40 Gateway West, LLC 2 <sup>nd</sup>	2/14/2007	1,065,000.00
Interstate Commerce Center Phase II	3/6/2007	1,856,848.86
J. Jireh's Corporation	9/6/2006	8,825,000.00
Meadow Creek Partners, LLC	11/8/2006	8,250,000.00
Midvale Marketplace, LLC	7/13/2006	4,075,000.00
Opaque/Mt. Edge \$7,350,000	4/27/2006	4,827,970.00
Preserve at Galleria, LLC	9/27/2006	4,430,500.00
Riviera - Homes for America Holdings, L.L.C.	5/26/2006	5,000,000.00
Roam Development Group	12/19/2006	26,566,256.72
Slade Development	3/8/2007	3,525,000.00
Urban Housing Alliance - 435 Lofts	8/21/2006	8,150,000.00
<b>Total</b>		<b>\$213,889,527.59</b>

**B. Transition to Compass**

10. A critical task performed by MFIM was the management of the closing of the sale transaction and transition of the purchased assets from the Debtors to Compass. I supervised this transition. As part of the transition, MFIM calculated and negotiated the final purchase price and related escrow accounts, transitioned the borrower negotiations to Compass and participated in meetings related to the mortgage license of Compass and related options. MFIM also archived thousands of pages of the Debtors' records in order to ensure that all parties (the USACM Trust, Compass and the post-Effective Date Debtors) retained sufficient records to perform their respective post-closing responsibilities. This transition should allow Compass to efficiently collect the remaining monies owed to the Direct Lenders and allow the USACM Trust to pursue the retained litigation and the collection of the remaining loans.

1 I declare, under penalty of perjury, that, to the best of my knowledge, information and  
2 belief, that the foregoing is true and correct.

3  
4 Mesirow Financial Interim Management, LLC

5  
6 By  \_\_\_\_\_

7 Robert E. Koe

8 Director

9 Mesirow Financial Interim Management, LLC

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